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4 IN THE UNITED STATES BANKRUPTCY COURT  
5 FOR THE DISTRICT OF ARIZONA  
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8 In re  
9 Steven R. Leivas and Robbin G. Leivas,  
10 Debtor.

11 Steven R. Leivas and Robbin G. Leivas,  
12 Plaintiff,

13 v.

14 Raynold P. Simoes; and Russell A. Brown,  
15 Chapter 13 Trustee,  
16 Defendants.

Chapter 13

Case No. 04-01315-PHX-SSC

Adversary No. 04-00079

**ORDER INCORPORATING  
MEMORANDUM DECISION  
DATED SEPTEMBER 27, 2005**

(Opinion to Post)

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18 Based upon this Court's Memorandum Decision dated September 27, 2005,  
19 which is incorporated herein by reference:

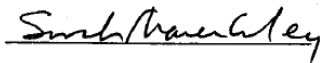
20 **IT IS ORDERED** that Simoes, as successor in interest, has presented  
21 cogent evidence that he has a valid lien under Arizona law as a result of the Debtors'  
22 ratification of the original secured loan transaction. In the alternative, Arizona law would  
23 recognize that Simoes has an equitable lien on the property. The Debtors are unable to set  
24 aside Simoes lien based on Section 544 of the Bankruptcy Code.

25 **IT IS FURTHER ORDERED** sustaining Simoes objection to  
26 confirmation. The Debtors must provide for Simoes' claim as secured, with the indebtedness  
27 being secured only by a lien on the Debtors' principal residence. The Debtors' objection to  
28 Simoes' proof of claim is overruled.

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**IT IS FURTHER ORDERED** denying the Motion for Relief from Stay.  
The Debtors can place the secured claim in the plan and proceed towards confirmation.  
Simoes failed to meet his burden and made no showing at this trial that considering all of the  
liens against the property, the Debtors had no equity in their residence.

DATED this 27th day of September, 2005.

  
Honorable Sarah Sharer Curley  
U. S. Bankruptcy Judge

BNC TO NOTICE